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State v. Montrose Appellant's Brief Dckt. 43098

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43098
)	
v.)	ELMORE COUNTY NO. CR 2014-2900
)	
JENNIFER L. MONTROSE,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
)	

STATEMENT OF THE CASE

Nature of the Case

After Jennifer L. Montrose pled guilty to possession of a controlled substance with the intent to deliver, the district court sentenced her to serve ten years, with three years fixed, and retained jurisdiction. The district court has since suspended her sentence and placed her on probation. Ms. Montrose appeals from her judgment of conviction and asserts that her sentence is excessive in light of the mitigating factors in her case.

Statement of Facts and Course of Proceedings

In February 2015, Ms. Montrose entered an *Alford*¹ plea to possession of methamphetamine with the intent to deliver. (2/6/15 Tr.; R., pp.33–40.) At sentencing, the State

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

recommended that the court place Ms. Montrose on probation, with an underlying sentence of ten years, with three years fixed. (2/20/15 Tr., p.43, Ls.2–5.) Ms. Montrose asked for a sentence of seven years, with two years fixed, and that the court place her on probation. (2/20/15 Tr., p.47, Ls.19–22.) The court sentenced Ms. Montrose to ten years, with three years fixed, and retained jurisdiction. (2/20/15 Tr., p.60, Ls.3–21; R., pp.48–51.) Ms. Montrose filed a notice of appeal timely from the judgment of conviction. (R., pp.53–55.)

After a successful rider, the court suspended Ms. Montrose’s sentence and placed her on probation. (Order Suspending Sentence After Retained Jurisdiction and Order of Probation; 7/24/15 Jurisdictional Review Hearing Minutes².)

ISSUE

Did the district court abuse its discretion when it sentenced Ms. Montrose to ten years, with three years fixed, for possession of methamphetamine with the intent to deliver?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Ms. Montrose To Ten Years, With Three Years Fixed, For Possession Of Methamphetamine With The Intent To Deliver

When a defendant challenges her sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v.*

² Ms. Montrose attached these documents to a motion to augment the record, which she filed with this brief.

Toohill, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834. Ms. Montrose’s sentence is excessive in light of the mitigating evidence in this case.

Ms. Montrose had a stable, happy upbringing. (PSI, p.9.) She dropped out of high school when she was seventeen because she had her first child with her then-husband, Jesse Sillonis. (PSI, p.10.) They had what she described as an “excellent wonderful marriage.” (*Id.*) But Mr. Sillonis was in the Army, and spending so much time apart led to their divorce after ten years of marriage. (*Id.*) Ms. Montrose eventually got remarried to Riley McCarroll, which she said was a “[h]orrible, big mistake.” (PSI, p.11.) Ms. Montrose had used methamphetamine just one time before she met Mr. McCarroll, but “picked it up again” when she was in a relationship with him. (PSI, p.15.) Their relationship ended after he physically abused her. (PSI, p.11.)

Ms. Montrose has a long history of using methamphetamine. (2/20/15 Tr., p.39, Ls.12–16; p.44, Ls.1–2.) She used methamphetamine for approximately twenty years before her arrest in this case, but only started using on a regular basis five years ago. (2/20/15 Tr., p.44, Ls.1–6.) Everyone at sentencing agreed that Ms. Montrose knew she was addicted and wanted to overcome that addiction. (2/20/15 Tr., p.42, Ls.6–10 (the prosecutor explaining: “Ms. Montrose does appear to admit that she does have a problem with methamphetamine. She does admit that she has been addicted to methamphetamine. She does indicate that she wants treatment.”), p.49, L.15 – p.50, L.4 (Ms. Montrose telling the court that she wanted to get started on treatment as soon as possible), p.56, Ls.2–11 (the district court explaining that it was sure Ms. Montrose would try her best on probation, but that the court did not believe she had the skills necessary to succeed); PSI, p.15.). Ms. Montrose told the PSI investigator she felt “embarrassed, horrible,

humiliate[ed], regretful, and ashamed” of her crime. (PSI, p.5.) This was Ms. Montrose’s first felony conviction. (2/20/15 Tr., p.42, Ls.19–20, PSI, p.8.)

Before sentencing in this case, Ms. Montrose demonstrated her motivation to stay sober and improve her life. During her time in jail, she volunteered to be an inmate worker. She explained: “I get up at 3:30 every morning, go to work until 8:30 in the morning, go back to my pod for two hours and then back to work again at 10:30 in the morning until 2:00 in the afternoon. It’s horrible, I don’t like it, but I continue to do it.” (2/20/15 Tr., p.48, Ls.12–19.) To help keep her on the right track after her release, she applied to and was accepted at the College of Western Idaho, found appropriate housing in the community, and lined up a job. (2/20/15 Tr., p.44, L.10 – p.45, L.25, p.48, Ls.9–11.)

Ms. Montrose’s crime in this case turns on her addiction, and that is something she is determined to take control over. Considering the mitigating factors in this case, her sentence of ten years, with three years fixed, was longer than necessary to achieve the goals of sentencing.

CONCLUSION

Ms. Montrose respectfully requests that this Court reduce her sentence to seven years, with two years fixed.

DATED this 10th day of December, 2015.

/s/
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of December, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

MPW/eas